

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

1.	EVELIA HERNANDEZ,)	
)	
	Plaintiff,)	
)	
v.)	Case No.: <u>CIV-14-338-HE</u>
)	
1.	FARMERS INSURANCE COMPANY,)	
	INC., a foreign corporation,)	
)	
	Defendant.)	

NOTICE OF REMOVAL

Defendant, Farmers Insurance Company, Inc., (hereinafter “Defendant”) pursuant to 28 U.S.C. §1441 et seq. in Local Court Rules of the United States District Court for the Western District of Oklahoma, states as follows:

1. The above-styled cause was commenced in the District Court of Canadian County, State of Oklahoma and is now pending in that court. Process was served on Defendant by certified mail on the Oklahoma Insurance Commissioner on March 20, 2014. A copy of Plaintiff’s Petition setting forth a claim for relief upon which the action is based is attached hereto and marked as Exhibit 1. A copy of the Summons served upon Defendant is attached hereto and marked as Exhibit 2.

2. According to Plaintiff’s Petition, she was a resident of San Marcos, San Diego County, California at all pertinent times to this lawsuit.

3. Defendant is a foreign corporation doing business in the State of Oklahoma. Defendant is incorporated in and has its principal place of business in Kansas.

4. The amount in controversy is greater than \$75,000 as set forth by Plaintiff in her Petition. Plaintiff prays for compensatory damages in her breach of contract claim in excess of

\$75,000 and compensatory damages in her bad faith claim in excess of \$75,000. Plaintiff also seeks punitive damages in excess of \$75,000. This lawsuit involves vandalism, theft and burglary to Plaintiff's rental property located in Yukon, Oklahoma in 2013. Plaintiff has asserted causes of action for breach of contract, breach of the duty of good faith and fair dealing and punitive damages. Plaintiff seeks a money judgment against Defendant for contractual damages, bad faith damages and punitive damages all in excess of \$75,000. Under Oklahoma law, a plaintiff may be awarded, as punitive damages, the greater of actual damages or \$100,000 for breach of the duty of good faith and fair dealing by the plaintiff's insurer. If the jury finds the insurer intentionally and with malice breached its duty of good faith and fair dealing it may award \$500,000 or twice the actual damage. 23 O.S. §9.1 (2003). "[P]unitive damages may be considered in determining the requisite jurisdictional amount." *Woodmen of World Life Ins. Soc. v. Manganaro*, 342 F.3d 1213, 1218 (10th Cir. 2003); *see also Geoffrey E. Macpherson, Ltd. v. Brincell, Inc.*, 98 F.3d 1241, 1244-1245 (10th Cir. 1996). Thus, the amount sought, by Plaintiff, for actual and punitive damages, exceeds the jurisdictional amount of \$75,000, exclusive of interest and costs. Clearly, "it cannot be said 'to a legal certainty that the claim is really for less than the jurisdictional amount'" *Geoffrey E. Macpherson, Ltd.*, 98 F.3d at 1245 (quoting *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 289 (1938)).

5. As a result of diversity of citizenship, and since the amount in controversy exceeds \$75,000, exclusive of interest and costs, this is an action over which the United States District Court for the Western District of Oklahoma has original jurisdiction pursuant to 28 U.S.C. §1332(a).

6. Copies of all process, pleadings and orders served on Defendant to date are attached hereto and have been filed in this Notice.

7. A copy of the Canadian County docket sheet is attached as Exhibit 3.
8. An Entry of Appearance filed by Plaintiff's counsel Tom Gibson in the state court action is attached are Exhibit 4.
9. A Civil Cover Sheet is also attached as Exhibit 5.

Respectfully Submitted,

BY: /s Sheila R. Benson

Greg D. Givens, OBA No. 10310
Sheila R. Benson, OBA No. 19050
GIVENS LAW FIRM
136 N.W. 10th Street, Suite 100
Oklahoma City, OK 73103
Telephone: (405) 604-6880
Facsimile: (405) 604-6998
E-mail: sbenson@givenslaw.net
Attorneys for Defendant,
Farmers Insurance Company, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of April, 2014, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

Tom C. Gibson
Tom C. Gibson, PLLC
508 W. Vandament Avenue, Suite 310
Yukon, Oklahoma 73099
Attorneys for Plaintiff

/s Sheila R. Benson